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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,543	02/08/2002	Kevin B. Morton	NEOMTRX.4C1DV2	4228
20995	7590	01/19/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				FOREMAN, JONATHAN M
ART UNIT		PAPER NUMBER		
				3736

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/072,543	MORTON ET AL.	
	Examiner	Art Unit	
	Jonathan ML Foreman	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 December 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on 12/22/05 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent No. 6,875,184 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,507,792 to Mason et al.

In regards to claims 1, 6, 11 and 12, Mason et al. discloses a closed loop heating system including a plurality of inflatable bladders (Figure 1); a reservoir (14); and a fluid flow path for placing the bladders in fluid communication with the reservoir; wherein the fluid flow path comprises a moveable wall such that fluid in the system can be moved by application of external pressure to the movable wall (Col. 9, line 54 – Col. 10, line 23). A heat exchange fluid is contained within the closed loop (Col. 6, lines 6 – 11). The fluid flow path includes a first (18) and second (20) conduit extending between the bladders and the reservoir. Mason et al. discloses a mechanical link between the bladders and a flow path between the bladders (Col. 7, line 62 – Col. 8, line 13).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4 – 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 3,995,621 to Fletcher et al. in view of US Patent No. 4,111,209 to Wolvek et al.

In regards to claims 1, 4 – 6, 11 and 12, Fletcher et al. discloses a closed loop heating system including a plurality of inflatable bladders (20; Figure 3); a reservoir (47); and a fluid flow path (24, 25) for placing the bladders in fluid communication with the reservoir. The device includes at least 6 inflatable bladders (Col. 3, lines 65 – 67). A heat exchange fluid is contained within the closed loop (Col. 5, lines 8 – 9). Fletcher et al. discloses a mechanical link (Col. 4, lines 4 – 10) between the bladders and a flow path (21) between the bladders. The fluid flow path includes a first (24) and second (25) conduit extending between the bladders and the reservoir. However, Fletcher et al. fails to disclose the fluid flow path comprising a movable wall such that a fluid in the system can be moved by application of external pressure to the movable wall. Wolvek et al. discloses a closed loop heating system wherein the flow path includes a first (70) and second (72) conduit extending between the bladder (64) and the reservoir and the flow path comprises a movable wall such that a fluid in the system can be moved by application of external pressure to the movable wall (Col. 5, lines 16 – 38). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the flow path as disclosed by Fletcher et al. to include a movable wall such that a fluid in the system can be moved by application of external pressure to the movable wall as taught by Wolvek et al. so the reservoir, inflatable bladders and flow path can be easily dissociated from the pump (Col. 7, lines 34 – 35) for disposal or ease of cleaning.

In regards to claims 7 – 10, Fletcher et al. in view of Wolvek et al. discloses a plurality of inflatable bladders (Figure 3), but fails to disclose the inflated width, length or thickness of the bladder. However, a change in the size of a prior art device is a design consideration within the skill of the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). In the present case, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the width, length or thickness of the bladder as disclosed by Fletcher et al. in view of Wolvek et al. to be any width, length or thickness as desired in order to allow the bladders to conform to breasts of different shapes and sizes.

6. Claims 1- 4, 6 - 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,507,792 to Mason et al. in view of US Patent No. 4,111,209 to Wolvek et al.

In regards to claims 1- 4, 6, 11 and 12, Mason et al. discloses a closed loop heating system including at least 3 inflatable bladders (Figure 1); a reservoir (22); and a fluid flow path for placing the bladders in fluid communication with the reservoir. The reservoir comprises a compressible container and has a movable wall (Col. 9, line 54 – Col. 10, line 23). A heat exchange fluid is contained within the closed loop (Col. 6, lines 6 – 11). Mason et al. discloses a mechanical link between the bladders and a flow path between the bladders (Col. 7, line 62 – Col. 8, line 13). The fluid flow path includes a first (18) and second (20) conduit extending between the bladders and the reservoir. However, Mason et al. fails to disclose the fluid flow path comprising a movable wall such that a fluid in the system can be moved by application of external pressure to the movable wall. Wolvek et al. discloses a closed loop heating system wherein the flow path includes a first (70) and second (72) conduit extending between the bladder (64) and the reservoir and the flow path comprises a movable wall such that a fluid in the system can be moved by application of external pressure to the movable wall (Col. 5, lines 16 – 38). It would have been obvious to one having

ordinary skill in the art at the time the invention was made to modify the flow path as disclosed by Mason et al. to include a movable wall such that a fluid in the system can be moved by application of external pressure to the movable wall as taught by Wolvek et al. so the reservoir, inflatable bladders and flow path can be easily dissociated from the pump (Col. 7, lines 34 – 35) for disposal or ease of cleaning.

In regards to claims 7 – 10, Mason et al. in view of Wolvek et al. discloses a plurality of inflatable bladders (Figure 1) having an inflated width, length and thickness (Col. 7, lines 25 – 28) that can be formed to have different sizes and shapes (Col. 8, lines 27 – 50). Although, Mason et al. in view of Wolvek et al. fails to specifically disclose the inflated width, length or thickness of the bladder. However, a change in the size of a prior art device is a design consideration within the skill of the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). In the present case, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the width, length or thickness of the bladder as disclosed by Mason et al. in view of Wolvek et al. to be any width, length or thickness as desired in order to allow the bladders to conform to a desired surface of the body.

Response to Arguments

7. Applicant's arguments filed 12/22/05 have been fully considered but they are not persuasive. Applicant asserts that Mason et al. fails to disclose a fluid flow path for placing the bladders in fluid communication with the reservoir; wherein the fluid flow path comprises a moveable wall such that fluid in the system can be moved by application of external pressure to the movable wall. However, the Examiner disagrees. Mason et al. discloses a fluid flow path (18, 20, 22) for placing the bladders (12) in fluid communication with the reservoir (14); wherein the fluid

flow path comprises a moveable wall such that fluid in the system can be moved by application of external pressure to the movable wall (Col. 9, line 54 – Col. 10, line 23).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 6,447,443 to Keogh et al. teaches a system including a fluid source which may include a manual or electric pump, an infusion pump, a peristaltic pump, a roller pump, a centrifugal pump, a syringe pump, a syringe, or squeeze bulb or other fluid moving means, device or system.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMLF


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